

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROSE MARY FARENDEN

Appeal 2007-0611
Application 09/800,986
Technology Center 3600

Decided: June 21, 2007

Before HUBERT C. LORIN, JENNIFER D. BAHR and LINDA E. HORNER,
Administrative Patent Judges.

HORNER, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 (2002) of the Examiner's final rejection of claims 1, 3, 4, 6-8, and 11-13, all the claims currently pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant's claimed invention is a system for recruiting candidates for employment (Specification 1:13-15). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. An internet-based system for recruiting candidates for employment having at least one server computer operably connected to at least one database and serving a plurality of client computers, the at least one server computer being configured to:

receive input defining a plurality of employment requisitions wherein each employment requisition has associated candidate matching criteria;

host an interactive interface for presenting a plurality of candidates with an employment skills questionnaire;

assess each candidate based on a comparison between each candidate's employment skills and the candidate matching criteria;

host an interactive interface for allocating the employer-hosted recruiting event invitations to candidates wherein the invitations are allocated based on the assessment;

host an interface for receiving an assessment of each candidate attending the employer-hosted recruiting event;

host an interface for presenting each candidate's assessment in real-time during the employer-hosted recruiting event;

host an interface for presenting a candidate assessment indicating how well the candidate's employment skills match the candidate matching criteria, as compared to other candidates; and

host an interface for selecting candidates for hire based on the assessment wherein the system automatically sends selected candidates an

offer letter in an electronic format prior to the conclusion of the employer-hosted recruiting event.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Puram	US 6,289,340 B1	Sep. 11, 2001
Smith	US 6,701,313 B1	Mar. 2, 2004

The following rejection is before us for review:

Claims 1, 3, 4, 6-8, and 11-13 stand rejected under 35 U.S.C. § 103(a) (2002) as unpatentable over Smith in view of Puram (Answer 3).

ISSUE

Appellant contends that the Examiner erred in rejecting the claims as unpatentable over the combination of Smith and Puram because the combination fails to disclose each and every claimed element (Br. 3). More specifically, Appellant contends that (1) the “interview notes” of Smith do not “constitute an ‘assessment’ upon which a hiring decision is subsequently made” (Br. 5) and (2) “Smith does not teach a separate interface for *presenting* each candidate’s assessment in real-time during the employer-hosted recruiting event” (Br. 5) (emphasis in original). The Examiner finds (1) the interview of Smith is equivalent to the claimed employer-hosted recruiting-event, (2) Smith teaches an interface for recording and displaying assessments of candidates during the interview, and (3) the feature of enabling multiple specialists to participate in the assessment/hiring process in real time during a recruiting event, relied upon by

Appellant, is not recited in the rejected claims (Answer 8). The issue before us is whether Appellant has shown that the Examiner erred in rejecting claims 1, 3, 4, 6-8, and 11-13 as unpatentable over the combination of Smith and Puram.

FINDINGS OF FACT

The relevant facts include the following:

1. Smith teaches a method and apparatus for automatically matching activities or entities on the basis of data objects corresponding thereto (Smith, col. 1, ll. 18-21).
2. Smith teaches that the prior art suffers from the general problem of “how to bring together the right person and the right job” (Smith, col. 1, ll. 48-50). Smith discloses that Smith’s invention “addresses the problem of matching coincidental needs [e.g., of employer and employee] relating to an activity or entity [e.g., a job]” (Smith, col. 2, ll. 48-49).
3. One of the first steps which must be undertaken by a job provider is to populate a database by generating a job profile 123 by quantifying the job using a classification system (Smith, col. 15, ll. 54-60 and Fig. 6).
4. Similarly, a job seeker must create a personal profile 126 by quantifying the job seeker’s personal profile (e.g., skills) using a classification index (Smith, col. 15, ll. 60-64).
5. The job seeker’s personal profile 126 is compared with the current job profiles 123, and a job summary screen 124 displaying the matches is provided to the job seeker (Smith, col. 15, l. 65 to col. 16, l. 11).

6. The job seeker must browse through the information on the job summary screen and decide which jobs to apply for by clicking on the associated link (Smith, col. 16, ll. 12-15).

7. The job seeker then completes the details required on a job apply screen and this information is submitted back to the web server 10 over the Internet and, if required, a testing screen is displayed to the job seeker in order for the job seeker to take a test (Smith, col. 16, ll. 17-21).

8. The job seeker takes the test and the answers are passed back to the web server 10 for evaluation as to whether the job seeker has passed or failed (Smith, col. 16, ll. 23-26).

9. If it is determined that the job seeker passed the test a screen is displayed to allow the job seeker to enter available interview times and these details are sent back to the web server 10 (Smith, col. 16, ll. 29-33).

10. The job provider having been notified of a match can access the web server 10 to review the job seeker's details, and if they are acceptable progresses to an interview request screen (Smith, col. 16, ll. 33-38).

11. An interview request/invitation is emailed to the job seeker who then indicates acceptance or declination of the interview (Smith, col. 16, ll. 38-43).

12. During an interview, "an interview notes screen is displayed to the job provider ... upon which notes can be made and links are provided to the job seeker's personal details" (Smith, col. 16, ll. 54-58).

13. If the job seeker is suitable for the job, a job offer screen is then displayed to the job provider for the job provider to fill in the appropriate details to

generate an offer to the job seeker (Smith, col. 16, ll. 58-65).

14. Smith does not teach an interface for presenting a candidate assessment indicating how well the candidate's employment skills match the candidate matching criteria, as compared to other candidates.

15. Puram teaches a system, and method for selecting a candidate from a pool of candidates for a position based on the skills held by the candidates (Puram, col. 1, ll. 7-14).

16. According to the candidate matching process of Puram, once a sub-pool of candidates of satisfactory size is identified, the next task is to determine which of the candidates in the sub-pool has skills and experience that most closely match the skills needed or desired for the position (Puram, col. 7, ll. 48-51).

17. The matching process is completed by comparing each candidate's scores for a particular skill with the employer's maximum desired score for that skill, each candidate's scores for all the skills are then added together to yield a total that is used to compare candidates. The candidate's scores are presented in a ranked list of the most closely matched candidates (Puram, col. 7, l. 50 to col. 8, l.11 and Fig. 11a-11b).

18. The customary meaning of assessment is a determination of "the importance, size, or value of" *Merriam-Webster's Collegiate Dictionary* 74 (11th ed. 2005).

19. Appellant's Specification does not provide a specific meaning for the term assessment, nor does it utilize the term contrary to its customary meaning.

PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness in rejecting claims under 35 U.S.C. § 103. *See In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*,

Appeal 2007-0611
Application 09/800,986

977 F.2d at 1445, 24 USPQ2d at 1444; *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).

The Examiner may take notice of facts or common knowledge in the art which are capable of such instant and unquestionable demonstration as to defy dispute. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). If Appellant fails to challenge the Examiner's notice and it is clear that he has been given ample opportunity to make such challenge, the Examiner's finding will be considered conclusive. *Id.* at 1091-92, 165 USPQ at 421. To challenge the Examiner's notice, Appellant must present evidence to the contrary. *Compare In re Knapp-Monarch Co.* 296 F.2d 230, 232 USPQ 6, 8 (CCPA 1961) (considering challenge to taking of judicial notice by Trademark Trial and Appeal Board).

ANALYSIS

Appellant's main argument for patentability is based on the assumption that the invention requires *separate* interfaces for receiving and presenting the assessment of a candidate during an employer-hosted recruiting event. However, the claimed invention, as defined by claim 1, requires only at least one server configured to host an interface for receiving and an interface for presenting. Nowhere in claim 1 is there any indication that a separate interface must be used for receiving and presenting the assessment as asserted by Appellant. Appellant presents assertions regarding various aspects and/or benefits of the invention, such as it being directed to a multi-faceted system for assessing employee candidates in real time, and that the separate interfaces enable different

hiring specialists to participate together in real-time during a recruiting event (Br. 4). However, as noted by the Examiner, these features/benefits are not recited in the claimed invention. “Many of appellant’s arguments fail from the outset because, ... they are not based on limitations appearing in the claims” *In re Self*, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982).

Appellant further contends, that “there is no teaching that the ‘interview notes’ [of Smith] constitute an ‘assessment’ upon which a hiring decision is subsequently made” (Br. 5). We disagree. The customary meaning of an assessment is a determination of the importance, size, or value (Finding of Fact 18-19). Smith teaches displaying an interview notes screen to the job provider upon which notes can be made and links are provided to the job seeker’s personal details (Finding of Fact 12). Clearly, these interview notes are the job provider’s assessment of the job seeker’s qualifications for the job, which are utilized in the determination of whether or not to hire the candidate. As such, we sustain the Examiner’s rejection of claim 1 as unpatentable over Smith and Puram. Appellant did not present any arguments as to the separate patentability of dependent claims 3¹, 4, and 6. As such, these claims fall with claim 1.

Appellant further contends, with regard to claims 7, 8, and 11-13, that the Examiner failed to establish a prima facie case of obviousness because the Examiner “has provided no factual evidence whatsoever to support his rejection of these claims” (Br. 5). The Examiner holds that the official notice statements,

¹ We note that claim 3 depends from canceled claim 2. Should further prosecution of these claims occur, claim 3 should be amended to properly depend from a pending claim.

which were originally made in the Action mailed May 31, 2005, were not properly traversed and, therefore, “the limitations under Official Notice are taken as admitted prior art” (Answer 9). We sustain the Examiner.

If Appellant fails to challenge the Examiner’s notice and it is clear that he has been given ample opportunity to make such challenge, the Examiner’s finding will be considered conclusive. *In re Ahlert*, 424, F2d 1088, 1091, 165 USPQ 418, 421 (CCPA 1970). To challenge the Examiner’s notice, Appellant must present evidence to the contrary. *Compare In re Knapp-Monarch Co.* 296 F.2d 230, 232 132 USPQ 6, 8 (CCPA 1961) (considering challenge to taking of judicial notice by Trademark Trial and Appeal Board). In the present case, Appellant does not present any evidence or make any assertions rebutting the Examiner’s statements, but merely asserts that the Examiner has not provided any factual evidence. Accordingly, even if Appellant’s statements were considered timely, Appellant still fails to properly challenge the Examiner’s statements. As such, we sustain the Examiner’s rejections of claims 7, 8, and 11-13 as unpatentable over Smith and Puram.

CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1, 3, 4, 6-8, and 11-13 under 35 U.S.C. §103(a) as unpatentable over Smith and Puram.

Appeal 2007-0611
Application 09/800,986

DECISION

The decision of the Examiner to reject claims 1, 3, 4, 6-8, and 11-13 under 35 U.S.C. § 103(a) as unpatentable over Smith and Puram is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

hh

BROOKS KUSHMAN P.C./FGTL
1000 TOWN CENTER
22ND FLOOR
SOUTHFIELD, MI 48075-1238